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IN THE

Supreme Court of the United States

October Term, 1957

No. 48

ROSE STAUB,

Appellant,

vs.

CITY OF BAXLEY,

Appellee.

Appeal from the Court of Appeals of the State of Georgia

BRIEF FOR AMERICAN CIVIL LIBERTIES UNION, *AMICUS CURIAE*

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Interest of *Amicus*

The American Civil Liberties Union appearing herein with the consent of the parties filed with the Clerk of this Court is a nationwide, non-partisan, non-profit, membership organization devoted to the protection and furtherance of civil liberties. It has no affiliation of any kind with any of the parties herein and is interested in this case solely because the ordinance under review raises those issues of constitutional limits upon local encroachment on freedom of expression and association which for many years have deeply concerned the American Civil Liberties Union.

Statement of the Case

This brief is submitted by the American Civil Liberties Union in support of the contention by appellant that the ordinance under which she was convicted is violative of the Due Process Clause of the Fourteenth Amendment.

We do not repeat the statement of facts to be found in the briefs of the parties, nor do we presume to re-canvass those arguments of constitutionality which appellant has already comprehensively developed insofar as they are directed specifically to labor organizations. We support those arguments but our discussion relates to the impact of the ordinance upon organizations other than labor unions.

ARGUMENT

The ordinance constitutes an unconstitutional deterrent to the citizenry of Baxley to asosciate in *any* membership organization and an unconstitutional restraint upon such lawful organizations to solicit and enlist membership among such citizenry.

Appellant was convicted for acting as a paid union organizer without complying with the licensing requirements of the ordinance. It is, therefore, appropriate for her to measure the ordinance in terms of its impairment of the constitutional and statutory rights surrounding union organizational activity; but the ordinance does not confine its area of application to labor unions. It covers solicitation of membership "for any organization, union or society of any sort which requires from its members the payments of membership fees, dues or is entitled to make assessments against its members" (R. 10). Indeed, appellee has made

explicit that the ordinance looks to the control of political and other organizations.[1]

If this ordinance is upheld in the case of a labor union organizer, we can see no constitutional basis for denying its extension to the organizer of any religious, charitable, humanitarian, cultural, social or political "organization, union or society" which depends upon "fees, dues or * * * assessments" for its financing. This ordinance requires without exception, that anyone enlisting membership in the Baxley, Georgia, local chapter of any organization ranging from the American Civil Liberties Union to the American Automobile Association, from the Boy Scouts of America to the Democratic Party, from Alcoholics Anonymous to the American Medical Association, and from the National Association for the Advancement of Colored People to the Ku Klux Klan must first attain the approval and license of the Mayor and Council of the City of Baxley. If the solicitor is a "salaried employee or officer", he, also, must pay $2,000 per year for a license and $500 as a fee for each member "obtained" (R. 11).

This ordinance lacks neither clarity nor boldness; in unmistakable terms it makes mandatory the described

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[1] J. H. Highsmith, attorney for the City of Baxley, Georgia, in granting the City's consent to the American Civil Liberties Union to appear *amicus* in this appeal, stated:

> "The primary motive of the municipal ordinance involved in the above stated case is to protect the citizens of this community against being unknowingly sold memberships in subversive organizations by parties of questionable reputation. To afford such protection the officials of the municipality must have some means of acquiring information as to the organizations being formed and the persons soliciting members therein. The provisions of the ordinance provide for such information. I believe that one of the dangers to our form of government is the lack of adequate protection against the inroads of subversive organizations. Greater interest needs to be aroused in eliminating the danger of such menace."

Letter of consent dated February 12, 1957, filed with the Clerk of this Court.

licensing and fee payment in the instance of the organizer of "any organization" sustained financially by its membership. It is unnecessary to document how many membership organizations are so sustained, and how few of those could survive in Baxley the twin burdens of license and fee. If this ordinance is enforced according to its terms, the City of Baxley will have legislated itself into social and political extinction. We believe that the First Amendment, as incorporated in the Fourteenth Amendment forbids such total regulation, if not suppression, of the associational activities which lie at the heart of the effective freedom of expression intended to be guaranteed by the First Amendment. *Joint Anti-Fascist Refugee Committee* v. *McGrath*, 341 U. S. 123; *Fiske* v. *Kansas*, 274 U. S. 380; *Herndon* v. *Lowry*, 301 U. S. 242; *Thomas* v. *Collins*, 323 U. S. 516; *De Jonge* v. *Oregon*, 299 U. S. 353; *Bowe* v. *Commonwealth*, 69 N. E. 2d 115 (Mass.); *cf. United States* v. *Cruikshank*, 92 U. S. 542; see *Whitney* v. *California*, 274 U. S. 357, 371-2; see also American Jewish Congress, *Assault Upon Freedom of Association* (1957), pp. 39-44.

When it is recognized that this ordinance does affect an enormous and significant variety of First Amendment rights, the legislation must be stricken pursuant to the decisions of this Court which have invalidated prior registration (*Thomas* v. *Collins*, 323 U. S. 516), discretionary licensing (*Schneider* v. *Irvington*, 308 U. S. 147; *Cantwell* v. *Connecticut*, 310 U. S. 296; *Lovell* v. *Griffin*, 303 U. S. 444; *Largent* v. *Texas*, 318 U. S. 418; *cf. Hague* v. *CIO*, 307 U. S. 496), or a flat license tax (*Murdock* v. *Pennsylvania*, 319 U. S. 105) as a condition to the exercise of the freedoms contemplated by the First Amendment.

In other circumstances a "parade of horribles" might be inappropriate where the case at hand deals directly with a labor organizer. *United States* v. *International Union*, etc., 352 U. S. 567; *Ashwander* v. *TVA*, 297 U. S. 288; *Bur-*

ton v. *United States*, 196 U. S. 283. But the ordinance here properly and forcefully compels consideration of the consequences it imposes upon all manner of associational activity. This is so not only because even "Slight encroachments create new boundaries from which legions of power can seek new territory to capture" (*Reid* v. *Covert*, 354 U. S. 1, —, 1 L. Ed. 2d, 1148, 1176), but also because the ordinance works its injury upon freedoms of association and expression by the threat as well as the fact of enforcement. The language of the statute is mandatory and all-inclusive. No responsible membership organization, confronted with criminal penalty for non-compliance, could safely rely upon laxness in enforcement. The existence of the ordinance is a potential deterrent to any membership organization contemplating activity in Baxley; if the ordinance is sustained in this case, every such organization necessarily would consider that the statute presents the alternatives of registration, license, and exorbitant fees or inactivity. Legislation which thus, by its very existence, impairs the free exercise of First Amendment rights must be tested on its face and with due regard for its radiational effect beyond the immediate case at bar. *Thornhill* v. *Alabama*, 310 U. S. 88; *Watkins* v. *United States*, 354 U. S. 178, — , 1 L. Ed. 2d 1273, 1290; *Wieman* v. *Updegraff*, 344 U. S. 183, 190-1; *cf. Barrows* v. *Jackson*, 346 U. S. 249, 257-8.

When the ordinance under review is so considered, the many constitutional infirmities of the statute pointed out by appellant become even more significant. For at stake here is not only the important freedom of a labor union to organize, but the right of "any organization, union or society of any sort" supported by its membership to exist in Baxley or in any other community which may decide to venture into the business of foreclosing its citizenry to lawful solicitation of membership in lawful organizations.

CONCLUSION

By reason of the foregoing, the judgment of conviction should be reversed.

Respectfully submitted,

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